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ATTORNEYS FOR PLAINTIFF AND THE PUTATIVE CLASS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN GLAUSER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

TWILIO, INC., a Delaware corporation,
GROUPME, INC., a Delaware
corporation,

Defendants.

Case No. **CV 11**

2584

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT

FILED

2-11-11

FILED

MAY 27 2011

RICHARD W. WIERING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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CLASS ACTION COMPLAINT

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2 1. Plaintiff Brian Glauser brings this class action complaint against Defendants
3 Twilio, Inc. and GroupMe, Inc. to stop Defendants' practice of making unsolicited text
4 message calls to cellular telephones, and to obtain redress for all persons injured by their
5 conduct. Plaintiff, for his class action complaint, alleges as follows upon personal
6 knowledge as to himself and his own acts and experiences, and, as to all other matters, upon
7 information and belief, including investigation conducted by his attorneys.

PARTIES

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9 2. Plaintiff Brian Glauser is a natural person and citizen of the State of Virginia.

10 3. Defendant Twilio, Inc. is a corporation incorporated and existing under the
11 laws of the State of Delaware with its principal place of business located at 548 Market St
12 #14510, San Francisco, California 94104. Twilio does business throughout the United
13 States, including in the State of California and this District.

14 4. Defendant GroupMe, Inc. is a corporation incorporated and existing under the
15 laws of the state of Delaware with its principal place of business located at 26 W 17th St
16 New York, New York 10011. GroupMe does business throughout the United States,
17 including in the State of California and this District.

JURISDICTION AND VENUE

18
19 5. The Court has subject matter jurisdiction over this action pursuant to 28
20 U.S.C. § 1332 (d), because (a) at least one member of the putative class is a citizen of a state
21 different from Defendants, (b) the amount in controversy exceeds \$5,000,000, exclusive of
22 interest and costs, and (c) none of the exceptions under that subsection apply to this action.

23 6. Venue is proper in this district under 28 U.S.C. § 1391 (a)(1-2) as Defendant
24 Twilio resides in this District, and additionally proper because both Defendants transact
25 business in this District, including soliciting consumers and entering into contracts with
26 vendors.
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COMPLAINT

1 **COMMON ALLEGATIONS OF FACT**

2 **A. Bulk SMS Marketing**

3 7. In recent years, marketers who have felt stymied by federal laws limiting
4 solicitation by telephone, fax machine, and e-mail have increasingly looked to alternative
5 technologies through which to send bulk messages cheaply.

6 8. Bulk text messaging, or SMS marketing, has emerged as a new and direct
7 method of communicating and soliciting consumer business. The term “Short Message
8 Service” or “SMS” is a messaging system that allows cellular telephone subscribers to use
9 their cellular telephones to send and receive short text messages, usually limited to 160
10 characters. A SMS message is a text message call directed to a wireless device through the
11 use of the telephone number assigned to the device.

12 9. When an SMS message call is successfully made, the recipient’s cell phone
13 rings, alerting him or her that a call is being received. As cellular telephones are inherently
14 mobile and are frequently carried on their owner’s person, calls to cellular telephones,
15 including SMS messages, may be received by the called party virtually anywhere worldwide.

16 **B. Defendants Send Text Messages to Consumers Who Do Not Want Them**

17 10. The newest evolution of text message marketing has taken the form of “group
18 messaging” applications, such as Defendant GroupMe’s service, in which a single person or
19 entity is able to create a “group” and send text messages to dozens of people at once.
20 Likewise, a group texting service allows all the recipients to respond to all other members of
21 the group with a single message.

22 11. In or around August 2010, Defendant GroupMe released a service called
23 GroupMe, available on the Internet at GroupMe.com.

24 12. Defendant GroupMe is marketed as a “group texting” tool, allowing
25 customers to simultaneously send SMS text messages to large groups of people *en masse*,
26 using one common cellular telephone number provided by Defendant Twilio.

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COMPLAINT

1 13. Defendant Twilio provides the application program interface, phone numbers,
2 and equipment that facilitates and transmits all text messages sent by GroupMe. Twilio plays
3 an integral role in the delivery, receipt and general transmission of each text message at issue
4 in this case. On information and belief, Twilio monetarily benefits from each text message
5 sent by GroupMe.

6 14. Using the GroupMe website or mobile application, a customer signs up,
7 creates a "group," and then adds up to twenty-four other individuals to that group by entering
8 their full names and cellular telephone numbers.

9 15. Defendants do not seek to obtain consent to be part of the group, nor does the
10 group originator need to demonstrate consent, or even agree to gain the consent of the group
11 members.

12 16. A consumer's participation in the group is opt-out, meaning that a consumer
13 may be added to and kept in the group without authorization.

14 17. Once all group members receive a message, they too can respond to everyone
15 else in the group an unlimited number of times, creating an ongoing "chat room" effect of
16 nearly constant text messages. Because the messages come from an unknown number, and
17 the group creator can easily input a fake name, the resulting chat room can be a chaotic storm
18 of text messages in which people are both attempting to figure out what the group is, who the
19 creator is, how they were put in the group, and how to stop it.

20 18. If a group member does not respond, he or she will eventually be removed
21 from the group; however, GroupMe's removal does not occur until a group member has
22 received anywhere from fifteen to thirty messages, including at least four messages directly
23 from GroupMe.

24 19. The overall result of this software design is that thousands of consumers
25 receive text messages from and through Defendant GroupMe's service that they neither
26 consented to nor wanted.

1 **C. Defendants Harvest the Phone Numbers Submitted by Group Creators**
2 **to Promote the GroupMe Service Through Text Spam**

3 20. Additionally, a group text service opens up an opportunity for the company
4 controlling the flow of messages, in this case Defendants, to send wireless spam to the
5 thousands of phone numbers added by consumers who are creating groups for their own
6 individual use.

7 21. In conjunction with Defendant Twilio, Defendant GroupMe is able to harvest
8 all phone numbers added by group creators in order to independently send its own text
9 message advertisements promoting its service and mobile application.

10 22. The moment a consumer creates a GroupMe texting group, but before the
11 group creator actually tries to text anyone in the new group, every member of the group is
12 instantly sent two text messages directly from GroupMe. GroupMe causes and Twilio
13 transmits these text messages to the consumer.

14 23. These text messages include advertisements of GroupMe's service and mobile
15 application (the "GroupMe Mobile App Text"). The GroupMe Mobile App Text contains a
16 direct link to download the GroupMe mobile application.

17 24. GroupMe does not disclose the fact that the GroupMe Mobile App Text will
18 be sent to consumers. Thus, the group creator is not informed that the GroupMe Mobile App
19 Text will be sent and cannot control its transmission.

20 25. The GroupMe Mobile App Text is sent solely to benefit Defendants.

21 **D. Plaintiff's Experience with Defendants**

22 26. On or about April 23, 2011, Plaintiff's cell phone rang, indicating that a text
23 call was being received.

24 27. The "from" field of such transmission was identified as 804-742-4986. The
25 phone number 804-742-4986 is owned and/or operated by Defendant Twilio, and provided
26 by Twilio to Defendant GroupMe.

1 28. The body of the first text message read:

2 Hi Brian Glauser, it's [group creator].

3 Welcome to GroupMe!

4 I just added you to "Poker" w/ [group member],

5 [group member], [group member], [group member],

6 [group member], [group member] & 3 more.

7 Text back to join the conversation.

8 29. This text message was sent directly from Defendants and not initiated or
9 consented to by Plaintiff or the group creator.

10 30. Almost immediately after receiving the text message alleged above, Plaintiff
11 then received a second message, the GroupMe Mobile App Text, which read:

12 GroupMe is a group texting service.

13 Standard SMS rates may apply.

14 Get the app at <http://groupme.com/a> to chat for free.

15 Reply #exit to quit or #help for more.

16 31. This text message was sent directly from Defendants for their own benefit and
17 not initiated or consented to by Plaintiff or the group creator.

18 32. Following these two messages, Plaintiff received a flurry of 7 other text
19 messages from group members, during and after which Plaintiff did not reply or otherwise
20 interact with the texting group.

21 33. Eventually, Plaintiff received the following message directly from GroupMe:

22 Hey, are you there?

23 GroupMe is more fun when you participate.

24 We'll remove you soon unless you reply

25 to the group or text #stay. Reply #exit to leave.

26 34. Thereafter, Plaintiff again did not reply or otherwise interact with the texting
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1 group. Plaintiff received at least five more messages from the group, until finally receiving a
2 message from GroupMe stating:

3 We haven't heard from you, so we removed you

4 from this group to be on the safe side.

5 Don't worry though. You can always get back in

6 by replying to this text.

7 35. At no time did Plaintiff consent to the receipt of the text messages alleged
8 above or any other such wireless spam text messages transmitted by and through Defendants.
9 Plaintiff did not consent to or request to be a part of the GroupMe group "Poker" prior to
10 being removed from the group.

11 36. Accordingly, Plaintiff was added to a group texting service, sent fifteen text
12 messages, and eventually removed from the group, entirely without his input or
13 authorization.

14 37. By effectuating these unauthorized text message calls, Defendants have
15 caused Plaintiff and members of the Classes actual harm. In the present case, because of the
16 nature of GroupMe's service, a consumer could be subjected to hundreds of text messages
17 before having an opportunity to opt out.

18 38. In order to redress these injuries, Plaintiff, on behalf of himself and a
19 nationwide class of similarly situated individuals, brings suit under the Telephone Consumer
20 Protection Act, 47 U.S.C. § 227, *et seq.* ("47 U.S.C. § 227"), which prohibits unsolicited
21 voice and text calls to cell phones.

22 39. On behalf of two Classes, Plaintiff seeks an injunction requiring Defendants to
23 cease all wireless spam activities and an award of statutory damages to the members of the
24 Classes, together with costs and reasonable attorneys' fees.

25 **CLASS ACTION ALLEGATIONS**

26 40. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
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23(b)(2) and Rule 23(b)(3) on behalf of himself and two Classes defined as follows:

The Automatic Opt-Out Class

All persons who received one or more text messages from GroupMe who were automatically unsubscribed from a GroupMe group because they never opted-in.

The GroupMe Mobile App Text Class

All persons who received the GroupMe Mobile App Text, or a substantially similar text from GroupMe, that advertised GroupMe's mobile application.

41. Excluded from both Classes are Defendants, their legal representatives, assigns, and successors, and any entity in which Defendants have a controlling interest. Further excluded are Plaintiff's attorneys. Also excluded is the judge to whom this case is assigned and the judge's immediate family, as well as any person who created a GroupMe group texting group.

42. There are thousands of members of the Classes such that joinder of all members is impracticable.

43. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Classes. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to those of the other members of the Classes.

44. Absent a class action, most members of the Classes would find the cost of litigating their claims to be prohibitive, and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

45. Defendants have acted and failed to act on grounds generally applicable to the

1 Plaintiff and the other members of the Classes in transmitting the wireless spam at issue,
2 requiring the Court's imposition of uniform relief to ensure compatible standards of conduct
3 toward the members of the Classes.

4 46. The factual and legal basis of Defendants' liability to Plaintiff and to the other
5 members of the Classes are the same, resulting in injury to the Plaintiff and to all of the other
6 members of the Classes as a result of the transmission of the wireless spam alleged herein.
7 Plaintiff and the other members of the Classes have all suffered harm and damages as a result
8 of Defendants' unlawful and wrongful conduct of transmitting wireless spam.

9 47. There are many questions of law and fact common to the claims of Plaintiff
10 and the other members of the Classes, and those questions predominate over any questions
11 that may affect individual members of the Classes. Common questions for the Classes
12 include but are not limited to the following:

- 13 (a) Does the wireless spam transmitted by Defendants violate 47 U.S.C. §
14 227?
15 (b) Are members of the Classes entitled to treble damages based on the
16 willfulness of Defendants' conduct?

17 **FIRST CAUSE OF ACTION**

18 **(Violation of 47 U.S.C. § 227)**

19 **(On Behalf of Plaintiff and both Classes)**

20 48. Plaintiff incorporates by reference the foregoing allegations as if fully set
21 forth herein.

22 49. Defendants made unsolicited text calls, including the text messages in
23 paragraphs 28, 30, 33, and 34, to the wireless telephone numbers of all members of the
24 Classes. Each such text message call was made using equipment and software maintained,
25 operated, and/or provided in part by Defendant Twilio, that, upon information and belief, had
26 the capacity to store or produce telephone numbers to be called, using a random or sequential
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COMPLAINT

1 number generator.

2 50. These text calls were made *en masse* and without the prior express consent of
3 the Plaintiff and the other members of the Classes to receive such wireless spam.

4 51. Defendants have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result
5 of Defendants' conduct, the members of the Classes are each entitled to, under section
6 227(b)(3)(B), a minimum of \$500.00 in damages for each violation of such act.

7 52. Because Defendants had knowledge that Plaintiff and other members of the
8 Classes did not consent to the receipt of the aforementioned wireless spam, the Court should,
9 pursuant to section 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages
10 recoverable by the Plaintiff and the other members of the Classes.

11 WHEREFORE, Plaintiff Brian Glauser, on behalf of himself and the Classes, prays
12 for the following relief:

- 13 1. An order certifying this case as a class action on behalf of the Classes
14 as defined above; appointing Plaintiff Glauser as the representative of
15 the Classes; and appointing his counsel as class counsel;
 - 16 2. An award of actual and statutory damages;
 - 17 3. An injunction requiring Defendants to cease all wireless spam
18 activities, and otherwise protecting the interest of the Classes;
 - 19 4. An award of reasonable attorneys' fees and costs; and
 - 20 5. Such further and other relief the Court deems reasonable and just.
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COMPLAINT


JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: May 27, 2011

By:


Sean P. Reis
EDELSON MCGUIRE LLP
One of the Attorneys for Plaintiff

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